UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IZAK PIÑEDO, and
MARCOS PIÑEDO,

Plaintiffs,

v. No. 2:15-CV-00637-LAM-CG

UNITED STATES OF
AMERICA,

Defendant.

AMENDED COMPLAINT FOR
PERSONAL INJURY AND PROPERTY DAMAGE,
UNDER THE FEDERAL TORT CLAIMS ACT

Plaintiffs Izak Piñedo and Marcos Piñedo, through their attorney, Angel Lomeli Saenz, allege as follows:

Jurisdiction, Service, & Venue

1. This is an action for damages in excess of $75,000.00, exclusive of interest and costs.

2. This action arises out of bodily injuries and property damage caused by a United States Department of Agriculture vehicle.

3. Plaintiff Izak Piñedo resides in Las Cruces, New Mexico, within the jurisdiction of this Court.

4. Plaintiff Marcos Piñedo also resides in Las Cruces, New Mexico, within the jurisdiction of this Court.

5. The Defendant is the United States of America.

6. This action arises under the Federal Tort Claims Act, Sections 2671 through 2680 of Title 28 of the United States Code. This Court is vested with jurisdiction pursuant to Section 1346(b)(1) of Title 28 of the United States Code. The Defendant may be held liable pursuant to 28 U.S.C. § 2674 for the acts and omissions of its employee acting within the scope of her office or employment, as alleged in this Complaint.

7. All conditions precedent and prerequisite to filing suit have been met pursuant to Section 2675 of Title 28 of the United States Code. Plaintiff Izak Piñedo filed a Claim administratively with the U.S. Department of Agriculture, through the U. S. Department of Agriculture, Agricultural Research Service in College Station, Texas, on May 16, 2014. Plaintiff Marcos Piñedo likewise filed a Claim administratively with the U.S. Department of Agriculture, through the U. S. Department of Agriculture, Agricultural Research Service in College Station, Texas, on May 11, 2015. The completed standard Form 95 Claims are attached hereto and incorporated fully by reference. *See,* Exhibits A and B. The United States Department of Agriculture issued final denials of Plaintiff Izak Piñedo's claim by certified mail on March 4, 2015 and August 20, 2015, and of Plaintiff Marcos Piñedo's claim by certified mail on August 20, 2015. *See*, Exhibits C – E, attached hereto.

8. The United States of America may be served with process in accordance with Rule 4(i) of the Federal Rules of Civil Procedure by serving a copy of the Summons and Complaint on **Damon P. Martinez, United States** Attorney **for the District of New Mexico, by certified mail, return receipt requested at his office:**

United States Attorney's Office
ATTN: Civil Process Clerk
201 Third Street NW
Suite 900
Albuquerque, New Mexico 87102

9. Service is also effected by serving a copy of the Summons and Complaint on Loretta E. Lynch, Attorney General of the United States, by certified mail, return receipt requested at:

The Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 28 U.S.C. § 1402(b) because the United States is a Defendant, the Plaintiffs reside and have their domicile in this district, the acts and omissions complained of herein occurred in this district, and no real property is involved in the action.

Parties

11. Plaintiff Izak Piñedo was at all times material hereto an adult individual, and a citizen and resident of the State of New Mexico. This Plaintiff resides at 8940 N. Valley Drive, city of Las Cruces, County of Doña Ana, State of New Mexico.

12. Plaintiff Marcos Piñedo was at all times material hereto an adult individual, and a citizen and resident of the State of New Mexico. This Plaintiff resides at 5308 Miller Dr., city of Las Cruces, County of Doña Ana, State of New Mexico.

13. The U. S. Department of Agriculture ("Department of Agriculture") is an arm and agency of the Defendant United States of America. Through the Department of Agriculture, Defendant acts through agents, officers, and employees within the State of New Mexico. In the course and scope of their employment with the Department of Agriculture, these agents, officers and employees drive vehicles on the roads and highways of the State of New Mexico. Defendant United States of America, through the conduct of these agents, officers and employees, holds

itself out to the public to drive with due care and attention, obeying the traffic laws and standard for careful driving which are applicable in the State of New Mexico.

14. Claudia Lenderman is not a party to this action. However, she is named herein as the Department of Agriculture employee who caused injury and damage to the Plaintiff. Claudia Lenderman is an adult individual who at all times material hereto was a citizen and resident of the State of New Mexico and an agent and employee of the Department of Agriculture.

Facts

15. On or about May 31, 2012, Defendant, United States of America, through the Department of Agriculture, owned a motor vehicle that was operated with its consent by its agent/employee Claudia Lenderman.

16. On or about May 31, 2012, Claudia Lenderman, acting in the course and scope of her office and employment with the Department of Agriculture, was driving said vehicle west on College Drive in University Park, County of Doña Ana, State of New Mexico.

17. In the course of this endeavor, Claudia Lenderman reached the intersection of College Drive and Union Avenue, where she was required by law to stop for a posted stop sign and yield the right-of-way to traffic on Union Avenue.

18. At the same time, Plaintiff Izak Piñedo was driving a Honda motorcycle on Union Avenue. The motorcycle was owned by Plaintiff Marcos Piñedo. Plaintiff Izak Piñedo was proceeding south while riding the motorcycle in the outside lane on Union Avenue, approaching the intersection with College Drive.

19. Claudia Lenderman failed to exercise due care, and thus failed to see Plaintiff or the motorcycle on which he was riding.

20. Claudia Lenderman negligently pulled into the intersection and into the path of the motorcycle being driven by Plaintiff Izak Piñedo.

21. As a direct and proximate result of Claudia Lenderman's negligent conduct as described above, the motorcycle on which Plaintiff Izak Piñedo was riding collided with the Defendant's vehicle with tremendous force, causing severe and permanent injury to the Plaintiff Izak Piñedo, and total destruction to the motorcycle owned by Plaintiff Marcos Piñedo.

22. The New Mexico police officer investigating the collision cited Claudia Lenderman for failure to use due care.

First Cause of Action:
Vicarious Liability of Defendant
United States of America, for Negligence

23. Plaintiffs reallege the allegations set forth in paragraphs 1 through 22, as if fully set forth here.

24. By virtue of the principal-agent or employer-employee relationship existing between the Defendant United State of America and Claudia Lenderman, the Defendant United States of America is vicariously liable for the negligent acts and omissions of Claudia Lenderman committed in the course and scope of her agency/employment duties.

25. By virtue of its ownership of the vehicle driven by Claudia Lenderman, and the consent it gave her to drive the vehicle, Defendant United States of America is liable for the negligent acts and omissions of Claudia Lenderman while operating the vehicle.

26. As a direct and proximate result of Claudia Lenderman's negligence, Plaintiff Izak Piñedo sustained personal injury and damages, and Plaintiff Marcos Piñedo sustained property damage.

27. The Defendant United States of America, if it were a private person, would be liable to Plaintiffs for these injuries and damages in accordance with the laws of the State of New Mexico.

28. Defendant United States of America was negligent in the following respects:

a. Failure to obey a traffic control device, which in this case was a stop sign. *See*, NMSA 1978, § 66-7-104(A));

b. Failure to yield the right-of-way in an intersection. *See*, NMSA 1978, § 66-7-328(A), (B);

c. Failure to yield the right-of-way in a stop intersection. *See*, NMSA 1978, § 66-7-330(B);

d. Failure to use due care. *See*, NMSA 1978, § 66-7-301(B)(1) and § 66-8-114;

e. Failure to exercise ordinary care for the safety of others. *See*, UJI 13-1603, UJI 13-1604, and UJI 13-1201 NMRA; and

f. Failure to keep a proper lookout and failure to maintain proper control of Defendant's vehicle. *See*, UJI 13-1202, and UJI 13-1203 NMRA.

Second Cause of Action:
Vicarious Liability of Defendant
United States of America, for Negligence Per Se

29. Plaintiffs reallege the allegations set forth in paragraphs 1 through 28, as if fully set forth here.

30. Defendant violated the New Mexico statutory duties alleged in paragraph 28a.-d.

31. These statutes defined standards of conduct.

32. Plaintiffs were in the class of persons sought to be protected by these statutes.

33. The harm, injury and damages to Plaintiffs are generally of the type the New Mexico Legislature through the statutes sought to prevent.

34. As a direct and proximate result of the negligence per se of the Defendant, Plaintiffs suffered injury and damages.

Damages

35. Plaintiffs reallege the allegations contained in paragraphs 1 through 34, as if fully set forth here.

36. The negligence and recklessness of Defendant, as alleged above, was the proximate cause and the cause in fact of the following injuries and damages to Plaintiff Izak Piñedo : traumatic brain injury; post-traumatic brain contusion and concussion; post-traumatic retrograde and anteriograde amnesia; post-traumatic concussion syndrome with memory loss; decreased concentration and attention; anxiety; depression and active suicidal ideation; post-traumatic diplopia; post-traumatic sleep disorder; post-traumatic cerebellar vs. vestibular disease; R/O post-traumatic seizure disorder, with debilitating use of short term memory; loss of coordination; decreased vision; depression; and extreme pain and suffering with extensive personal injuries.

37. These injuries, pain, suffering and damages are either permanent or continuing, and Plaintiff Izak Piñedo will suffer these injuries, pain, suffering and damages in the future.

38. The negligence and recklessness of Defendant was also the proximate cause and the cause in fact of the total destruction of the motorcycle owned by Plaintiff Marcos Piñedo.

WHEREFORE, Plaintiffs demand judgment against the Defendant United States of America for all damages allowed by New Mexico law, federal law, and equity for all the injuries, pain, suffering, damages, and property damage alleged above; for post-judgment interest at the applicable legal rate; for all Court costs incurred in this litigation, and for such other and further relief, at law and in equity, both general and special, to which the Plaintiffs may show themselves entitled and of which the Court believes them deserving.

Dated: October 21, 2015

Respectfully Submitted,

ANGEL LOMELI SAENZ, P.A.

By: ______________________

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